

The Turks and Caicos Islands

BACKGROUND

Geography

The Turks and Caicos Islands (TCI) are part of the British Overseas Territories in the Caribbean, situated some 575 miles southeast of Miami. The TCI are part of the Bahamas chain and cover some 193 square miles (430 square km). To reach the 40 TCI atolls (or cays), you take a short 75-minute flight from Miami. Six of the TCI islands are permanently inhabited: Grand Turk, Salt Cay, South Caicos, Middle Caicos, North Caicos, and Providenciales. Grand Turk has the highest elevation at 163 feet and is home to the territorial capital, Cockburn Town. Providenciales, often called “Provo,” is the business and tourist center and remains the most populous island. The major languages are English and Creole.

Population

The total population counted 33,202 in 2006, with an estimated indigenous “Belonger” population of 11,750 (34 percent) and 21,452 “non-Belongers” (66 percent). The estimated population for 2007 was about 34,862. In 2007 about 400 to 500 illegal “boat people” per week were coming to the TCI.¹ Provo-island houses a new detention facility for illegal immigrants.

Non-Belongers consist mostly of immigrants from Haiti and the Dominican Republic, as well as American, Canadian, British, and other European expatriate residents and workers. Though Belongers are not fully defined in law, the TCI Constitution makes frequent reference to them. For example, a person seeking appointment to office in public or government service must be a Belonger.²

The majority of the population is of African descent, the rest being of mixed race. About 14,000 former TCI islanders live in the Bahamas and some return for seasonal work. TCI's population is mostly Protestant Christian.³

Economy

The main economy is based on tourism and offshore financial services, with the United States and Canada being the leading sources of those businesses. TCI is a "zero tax" jurisdiction. It has no income, capital gain, wealth, gift, or inheritance taxes. TCI has no tax treaties with any other jurisdictions. The major sources of government revenue include stamp duties, customs receipts, and fees from offshore financial activities. The U.S. dollar is used as the local currency. TCI has no central bank or monetary authority. There are no restrictions on movement of funds into or out of TCI.

The TCI have a structure for financial supervision that encompasses banking, insurance, mutual funds, investment brokers, trusts, trustees, companies'

registrations, and company service providers. The banking sector, consisting of seven banks, is small but pivotal in the financial structure of TCI. Specialized insurance, in the form of producer-owned reinsurance companies (PORCs) is a major and growing line of business in the offshore financial sector. TCI trusts and corporate vehicles for offshore clients provide the basis for an active trust and company service provider sector.⁴ Recently, the TCI have seen an upsurge in cruise ships and their registration on Grand Turk. The economic and financial structure of TCI and the corporate vehicles available under TCI law make it vulnerable to money laundering. A variety of money laundering cases involving TCI have been prosecuted or are under investigation.

Annual tourism amounted to about 200,000 in 2007, particularly with holiday makers from Canada. This is one of the reasons why the Canadian government has made continuous efforts to annex the TCI over the past years. The labor force totaled around 12,000 workers in 2008, of which over 50 per cent were unskilled non-Belongers. Additional social and economic indicators are presented in Table 1.

[Table 1 here]

History

There has been a considerable amount of political conflict surrounding the ownership of the Turks and Caicos Islands not only within the Caribbean, such as

Bermuda and the Bahamas, but within the British Empire. The Spanish explorer Juan Ponce De Leon first put these *cayos* (small islands) on the map in 1512. After brief Spanish rule in the fifteen hundreds, the Caicos Islands served as a hideout to pirates, such as Francois L'Olonnais, Blondel, Captain Dulaien, Jack Rackham, and two infamous female pirates, Anne Bonny and Mary Read. The Turks islands were occupied by the French, Spanish, or British, in turn.

One might well describe the inherent racial strife that exists on TCI as being a conflict between Belongers and non-Belongers. Some of it results from the fact that both Bahamians and Turks claim that Christopher Columbus first discovered their shores on October 12, 1492. The Bahamas renamed Watling Island as San Salvador and TCI passed similar legislation for their national park, by renaming one of their cays. Both nations celebrate Columbus Day on 12 October each year.

Historical data is patchy, though the museum on Grand Turk Island provides some useful archived material that tells us that Bermudans arrived on these islands during the mid-sixteen hundreds and started a thriving salt business. Some of the main salt ponds (*salinas*) survived until the mid-twentieth century, with the new prison, Her Majesty's Prison (HMP) Grand Turk, built on the largest salina. Bermuda was then in possession of the Turks from the mid-sixteenth century onwards. Thereafter, for about a century, the rule of English law prevailed throughout the Commonwealth. Spanish and French forces seized the

Turks islands in 1706, but Bermudian forces expelled them four years later in what was probably Bermuda's only independent military operation.

When the American Declaration of Independence of 1776 left British loyalists (Tories) from South Carolina and Georgia without a homeland, many took advantage of British Crown Land Grants and settled on the TCI. Salinas and cotton plantations prospered for nearly 25 years until the boll weevil (cotton bug) destroyed them.

The TCI were formally federated with the Bahamas under the *Bahamas Act of 1799*. In 1806 the Bermudian customs authorities acknowledged Bahamian annexation when it ceased to allow free exchange between the Turks and Bermuda. This affected many enslaved Bermudians, who, like the free ones, had occupied the TCI only seasonally, returning to their homes in Bermuda after the year's salt raking had finished. During the French Revolution (1789–1799), French privateers became a menace to British and American shipping in the West Atlantic and Caribbean, resulting in the quasi-war between the United States and France and to the Royal Navy (1798 – 1800) largely fought at sea.

In 1807 the British Royal Navy seized hundreds of slaves from the Turks islands and set them free on the shores of the Bahamas, which is another reason why some Turk islanders' roots can be traced to the Bahamas. The *Slavery Abolition Act 1833* ended slavery in 1834 in the British Empire. Emancipation Day is celebrated to this effect on August 1 each year, heralding the liberation

from slavery of millions of Africans in the diasporas of the Caribbean, particularly in the TCI, Anguilla, Guyana, Antigua, Barbados, Bahamas, and Bermuda.

During the 1840s the British government assigned political control of the TCI to the Bahamas, but in 1848 the TCI gaining full colonial status and separation from the Bahamas with their own elected legislative board and an administrative council president. However, in 1873, the TCI were annexed to Jamaica and it remained under Jamaican rule for some 90 years, until Jamaica gained independence in 1962. Until then, the Turks and Caicos islands were part of the Federation of the West Indies.

On May 31, 1962 the TCI became a British crown colony with its own administrator, but in 1965 the governor of the Bahamas took over governance of the TCI. When the Bahamas gained independence from the United Kingdom in 1973, the TCI once again became a constitutional self-governing part of the British Overseas Territories.

In 1974 a Private Member's Bill from the Canadian House of Commons by Max Saltzman, Leader of the New Democratic Party, proposed that the Turks and Caicos Islands be annexed to Canada. However, the bill did not succeed in the Canadian House of Commons. In 1976 the TCI were granted their first full Constitution establishing an elective form of government. This Constitution was suspended in 1986.⁵ A new Constitution followed in 1988, which was eventually

superseded by the present Constitution of 2006 and brought into force with the *Turks and Caicos Islands Constitution Order 2006*.⁶

Governance

Today TCI is an internally self-governing Overseas Territory (OT) of the United Kingdom with a ministerial system of government. The British monarch, Queen Elizabeth II, is the sovereign of all OTs, represented by respectively appointed governors. The United Kingdom's Foreign and Commonwealth Office oversees all OTs' policies and supports the appointed governors. The governor of TCI retains responsibility for internal security, external affairs, defense, public service, and offshore finance. The governor appoints the judiciary, as well as the attorney general and the chief secretary.

The ministerial system of government of the TCI has a premier as head of government. The TCI's Executive Council consists of three ex-officio members plus five appointed members by the governor chosen from among the members of the Legislative Council. The TCI Cabinet is comprised of the governor, the premier, six ministers, and the attorney general. The governor chairs the Cabinet and is responsible for external affairs, defense, internal security, and the regulation of international financial services. The TCI Parliament is referred to as the House of Assembly and consists of the speaker, 15 elected members, four appointed members, and the attorney general.

The governor grants Belonger status on the basis of the length of time that a person has stayed in the TCI, the contribution they have made to the country and how they have assimilated into the community. In each case, the governor should consult with the Secretary of State.⁷

The two main political parties are the Progressive National Party (PNP), and the Peoples' Democratic Movement (PDM). Loosely defined, the PNP resembles the conservatives and the PDM is the labor party. The policies of both parties are fairly parochial, resembling English local or parish councils. About 9,000 Belongers were eligible to vote in the February 2007 general election, where the PNP party won 60 percent of the votes and 13 of the 15 seats in the House of Assembly. The next general election is due in 2011. Full parliamentary assembly meetings are held three times a year. Suffrage is universal for those over 18 years of age and only Belongers can vote.

Legal System

TCI's legal system is based on English common law; however, some customary laws still exist from Jamaica and the Bahamas. Most of the laws derive from ordinances passed in the legislative council and, to a lesser extent, from legislation specially extended to TCI by the United Kingdom. In the case where statutory law does not apply or requires interpretation, the common law applies. The attorney general is responsible for all legal advice to the TCI government, for

all prosecutions, law revision, and law reform.

The court system is comprised of the Magistrates' Court, the Supreme Court, and Court of Appeal, all of which sit in the TCI. The final court of appeal in all civil and criminal matters is the Privy Council at London's Westminster. The Supreme Court is vested with the same jurisdiction and powers as the high court of England and Wales. Powers to pardon lie with the queen but are exercised by the governor.

The judges of the Supreme Court must be qualified barristers or solicitors, either from the U.K., any part of the Commonwealth, or Ireland, or they must be a member of the Faculty of Advocates or a Writer to the Signet of Scotland. All judges are appointed by the governor. The TCI Court of Appeal consists of a president and two justices of appeal, determined and appointed by the governor on his discretion.

Sentencing

The Supreme and Magistrates' courts of the TCI have a limited sentencing range available which is not always in line with English law on the UK mainland. This means there is a disparity between the Turks and Caicos and English sentencing laws (e.g. *Evidence (Proceedings in Other Jurisdictions) (Turks and Caicos Islands) Order 1987*, Statutory Instrument 1987 No. 1266).

For example, the maximum for indecent assault in England being ten years and for assault five years, and in the TCI being two years.

The Judicial Committee of the Privy Council – part of the Ministry of Justice in London - is the court of final appeal for the UK overseas territories and Crown dependencies. The Committee – made up usually of five judges - has complete discretion whether to grant special leave, mostly granted in criminal cases, where leave cannot usually be granted by the Court of Appeal in London, but it is sometimes granted in civil cases where the local Court of Appeal has for any reason refused leave.

The TCI Court of Appeal sits for two weeks twice a year, hearing criminal and civil appeal matters. There were two appeals pending before the Privy Council Judicial Committee in 2007 (Privy Council Appeal Statistics, 2007).

CRIME

Classification of Crimes

TCI's criminal justice system is adversarial (accusatorial) in nature, based on English criminal law. Classification of criminal offenses follows English procedural and criminal justice legislation, such as the *Criminal Justice Act 2003* or the *Criminal Justice and Immigration Act 2008*. Less serious crimes are referred to as “summary offenses” and serious ones are known as “indictable offenses.” Similar to English criminal procedure, all criminal offenders are

brought in the first instance before a TCI magistrates' court, in order to decide where the defendant should be tried. Rules of evidence also follow English law supplemented by local statutory instruments.

Drugs and Money Laundering

By far the most serious offenses on TCI today involve international organized crime, such as drug trafficking and money laundering, because the TCI are one of the main transshipment points for illicit drugs for South American narcotics destined for the U.S. and Europe (see Box 1).⁸ Money laundering offenses extend to proceeds derived from all serious (indictable) offenses and self-laundering is covered. Corporate bodies can also be held liable for money laundering. However, one problem lies in the fact that money laundering is criminalized by four statutes on TCI. This means that drug and non-drug money laundering regimes run parallel and issues of consistency arise. The International Monetary Fund Report of 2005 recommended that TCI urgently needed to harmonize and unify all applicable money laundering offenses by removing the distinctions between drug and non-drug money laundering, and consolidating all legislation regarding money laundering into one statute for the TCI and other OTs.

[Box 1 here]

TCI domestic laws enable a range of drug-related mutual legal assistance

under the Criminal Justice (International Cooperation) Ordinance of 1998 and enforcement of overseas confiscation orders under the *Proceeds of Crime Ordinance 1998 (Designated Countries and Territories Order 2001)*. Various bilateral U.K. and U.S. money laundering statutory instruments deal with and allow for judicial cooperation concerning the financing of terrorism in Overseas Territories.

All OT mutual assistance must be channeled through the governor and the attorney general's chambers for non-U.S. related cases, or the chief magistrate for U.S. related cases. Law enforcement assistance from TCI can be obtained through the police via Interpol channels, though there are also informal arrangements. No formal arrangements authorize TCI law enforcement authorities to conduct cooperative investigations or coordinated seizure and forfeiture actions with other jurisdictions. However, such cooperation is said to exist. There is an abundance of banking and financial services laws to fight money laundering on TCI and to stop the financing of terrorist organizations. Still, declaration of items left in bank safety deposit boxes is not yet compulsory; though banks now include in their lease agreement that they have the right to inspect the contents of safety boxes. The volume of legislation on TCI, and indeed the other Overseas Territories, makes it difficult to regulate and oversee the financial sector; thereby creating conditions favorable to being a tax haven and facilitating money laundering operations from overseas.

In February of 2003 the Executive of the International Monetary Fund (IMF) conducted a large-scale investigation into the TCI's economic and financial structure linked to off-shore finance and money laundering. Detailed assessments were carried out for the banking and insurance sectors, as well as for the regime for Anti-Money Laundering and Combating the Financing of Terrorism. The report established that by the end of 2002 there were a large number of foreign banks and insurance companies on TCI. There were eight licensed banks, of which six were national banks and two were offshore banks with no banking operations in TCI. Three banks conducted a largely retail banking business and account for the bulk of bank assets and deposits. Total bank on-balance sheet assets were \$480 million. There were two offshore banks carry on banking business in Panama and Venezuela. There were 3,013 licensed insurance companies, and there were no details available as to the total assets.

The 2005 IMF report concluded that English common law legal and banking regulations were inadequate to deal with fraud and money laundering on the TCI. The IMF found large inconsistencies in banking legislation and regulatory guidelines regarding disclosure and money laundering. There was a total lack of transparency. Many banks and insurance companies did not produce annual reports, making fraud and money laundering easy for those in the know. The IMF strongly recommended that the U.K. government make efforts to put in place additional regulatory resources and, if this did not happen immediately, TCI

would continue to be exposed to the risk of its financial and corporate services being misused for illegal purposes (see Box 2).

[Box 2 here]

Interpol, the world's largest police organization facilitating international police cooperation, has a permanent sub-bureau on the TCI. Interpol's Anti-Money Laundering Unit cooperates with Europol's Financial Crime Unit in the fight against money laundering and terrorism financing by placing specific liaison officers on the TCI as points of contact for its Camden Assets Recovery Inter-Agency Network (CARIN). CARIN is an informal international network for tracing, freezing, seizing, and confiscating the proceeds from criminal activities. From 24 February 2003, the *Proceeds of Crime Act 2002* provided the UK Assets Recovery Agency with unique powers to confiscate assets within the EU and its overseas territories, thereby helping to reduce transnational organized crime.

Illegal Immigration

Another problem is illegal immigration mainly from Haiti, whose people are fleeing economic and civil disorder. Though the British government has joined forces with U.S. authorities to strengthen border control, the Navy appears to do nothing, according to the TCI government. In 2007 the premier called for increased inter-agency cooperation and intelligence exchange between U.K. customs, immigration and police services, and the U.S.A.

Crime Statistics

The official TCI tourism website informs visitors that crime on the islands is “the lowest in the Caribbean,” but recorded police statistics show that violent crime is on the increase, mostly linked to drug-trafficking from Latin America to the U.S.-mainland via Miami. Most property crimes are committed on Providenciales and Grand Turk by inter-islanders. The Royal Turks and Caicos Police Force has been strengthened and increased in size due to additional British government overseas aid funding in 2003, which accounts for the increase in arrests and charges (“clear up rates”). Five Cays and Chalk Sound now have sub-police stations to conquer organized illegal drug trafficking into Miami.

Police statistics for 2006 showed a decrease in crime by 17 percent in Providenciales, whereby 287 fewer crimes were reported compared with the previous year. However, there was a sharp increase in recorded crime on Grand Turk, accounting for a quarter of all crime committed on TCI, with an increase of 148 percent in 2006, compared with the previous year. The latter can be attributed to increased police resources on Grand Turk as well as new stop-and-search powers. In 2003 some 505 persons were arrested and charged. This figure decreased to 467 in 2005 and rose again to 557 in 2006. Police clearance rates have averaged 30 percent since 2005. Providenciales, the holiday island, continues to report the largest proportion of crime (67 percent in 2007) (see Box

3).

[Box 3 here]

Like in England, Wales, and Northern Ireland, the age of criminal responsibility is aged ten and adult crime begins at age 18. Juvenile delinquency is a large social problem, mainly linked to the Haitian boat people crisis with large influxes of children being dumped on TCI and trafficked to other Caribbean islands or sold to Florida. The number of teenage boys involved in crime has increased dramatically, though there are still low prosecution results, something which continues to worry TCI government.⁹ In 2005 14 boys were charged with property offenses compared with 69 in 2006, which is a 40 per cent increase. Most of them are repeat offenders. Three teenage girls were arrested and charged in 2005.

Most reported crimes are tourist- and vehicle-related, making up 17 per cent of the total crimes reported in 2006. There were 263 reported “motor-vehicle interferences” in 2005. This decreased in 2006 to 120, a decline of 54 per cent. The offense of “taking a motor vehicle without authority” decreased from 115 to 59 over the same period, a drop of over 50 per cent. There were 34 firearms offenses in 2006. Of the 38 robberies reported in 2006, 74 per cent involved the use of firearms, 35 of which occurred on Providenciales. A gun amnesty was held in 2007 in an effort to combat gun-related crime in the TCI. The *TCI Free Press*’ annual public opinion poll of 2006 showed that the fear-of-crime-element had

decreased, with locals feeling ‘safer’ due to an increased police presence on the islands. In 2005, 82 non-Belongers were charged with at least one criminal offense and 128 in 2006. Police and government reports state that most crimes are committed by illegal immigrants from neighboring Haiti.¹⁰

FINDING OF GUILT

All criminal investigations and prosecutions are instigated by the attorney general (AG). Pre-trial detention on remand is common place directed from the magistrates’ court on Provo Island. Since the English *Bail Act 1976* has never properly been incorporated into the TCI criminal procedural rules, a defendant does not have the *prima facie* right to bail, as would be the case in an English court section 4, Schedule 1 of the *Bail Act 1976*. Alternative sanctions, such as community punishment orders do not yet exist; consequently, there is no probation service. Trial of indictable (serious) offenses is by judge and jury in the main courthouse of Grand Turk, although this burned down in October 2007.

Since January 2008 video-conferencing facilities exist at the Providenciales Magistrates’ Court. The direct court video system links the justices’ bench straight into HMP Grand Turk, aimed to make considerable savings in the prison’s budget, as it reduces the number of inmates who are being transported to and from the court by air for short hearings. The system is mainly used for bail and further remand hearings, and each hearing typically takes about

ten minutes of court time. Full trials and preliminary inquiries still require the inmate to appear at court in person. The TCI are awaiting another new magistrate's court plus a new Supreme Court, both of which will service HMP Grand Turk.

PUNISHMENT

Types of Punishments

Due to deep rooted Christian values and beliefs on the TCI, crime is still associated with sin, impurity, and evil. Local Belongers strongly believe in retributive justice in that the criminal must be punished severely for his wrongdoing and misdemeanors. Prison sentences tend to be long and the local population thinks this a suitable sacrifice towards an aggrieved deity. Generally, the court makes no distinction between the sentencing of a male, female, or juvenile offender for similar crimes. Accommodation is usually in the one prison, which is HMP Grand Turk (see Box 4).

[Box 4 here]

The TCI Parliament has frequently debated the reintroduction of corporal punishment and the death penalty, although it is fair to say that these options will not be available as long as TCI remain a British Overseas Territory. For this reason, sentencing punishment tends to be more severe than in England for

similar offenses, whereby non-Belongers are often doubly punished. Convicted drink-driving offending tourists are immediately expelled from the islands preceded by remand in custody without bail. Penalties for possession, use, or trafficking in illegal drugs are severe; convicted offenders can expect long jail sentences and heavy fines. Engaging in sexual conduct with children, and using or disseminating child pornography in a foreign country are offenses punished by imprisonment under the *Sexual Offences Act 2003*. Homosexuality was an illegal act until the *Caribbean Territories (Criminal Law) Order of 2000* legalized homosexual acts between two consenting adults in private.

Corporal punishment was still in existence until 1998 and was used in the old local prison principally on juveniles even though torture by public officials in the course of their duties had officially been abolished in 1988. When the European Torture Commission of the Council of Europe visited the TCI in 1998 the inspectors took particular interest in the management of prisoners at HMP Grand Turk. The Commission noted with concern that prisoner beatings by staff were commonplace and the report strongly recommended the removal of corporal punishment from the TCI's statute books. The Torture Commission stated that corporal punishment was no longer acceptable in a modern society and that the maltreatment of prisoners in the new HMP Grand Turk was contrary to the European Convention.

Subsequently, on 25 March 1998, the TCI's Legislative Council passed new legislation and removed all references to corporal punishment from three statutes: *the Offences against the Person Ordinance*, the *Young Offenders Punishment Ordinance* and the *Malicious Injuries to Property Ordinance*, all of which had previously provided for corporal punishment. The death penalty was abolished in 1991 under the *Abolition of Death Penalty for Murder – Caribbean Territories Act 1991* for treason and piracy-related offenses.

Since the European Convention on Human Rights and Fundamental Freedoms came into force in England and Wales by way of the *Human Rights Act 1998* in October 2000, the British Overseas Territories are expected to comply fully with the convention as well as all other international human rights instruments. In particular, Article 3 of this convention prohibits torture and inhuman or degrading treatment or punishment. Additionally, the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment* requests regular reports on the treatment of persons in police or prison custody every four years.

Prison

The TCI society has historically regarded prison as an ancient ritual institution which “cleanses the soul” in order to stop crime “polluting society.”¹¹

Imprisonment was originally reserved for black slaves and later extended to “low-class freemen” offenders regardless of social status.

When the English Chief Inspector of Prisons, Judge Stephen Tumim, inspected the old prison on Grand Turk in 1988, he wrote that the prison needed to be replaced and basic staff training needed to be approved.¹² That same year the TCI Parliament passed new prison legislation to address these concerns. Judge Tumim returned to Grand Turk Prison in 1991, undertaking a follow-up inspection. In his report to the TCI Attorney General, he noted that the prison was overcrowded, with few structured programs for inmates, and poor dietary conditions. There were severe problems with prison management. There was also no system of parole, suspended sentences, or visitation.¹³

Following Judge Tumim’s damning reports, the old prison was eventually demolished and HMP Grand Turk was built in 1997, following designs of London’s Pentonville Prison of 1842 with its traditional radial star-shaped design. Though the prison was initially designed to hold 104 inmates, HMP Grand Turk held 113 prisoners, including remands and juveniles in December 2006.

Since its inception, the prison has experienced problems with racial integration amongst staff and prisoners, the causes can still be attributed to historical events. Very few local prisoners tend to populate the prison; the majority of inmates are from neighboring Jamaica, Haiti, or the Dominican Republic. On arrival, many demand separate living units, often to the detriment of

female prisoners. After the volcanic eruptions on Montserrat in 1998, prisoners were evacuated from HMP Montserrat to the new prison at HMP Grand Turk. The Montserratians demanded separate accommodation, objected to local TCI guards, also objecting to some Jamaican prison officers. This resulted in separate Montserratian prison guards being flown hundreds of miles to guard their own prison population. Although this was seen as only a temporary measure, this arrangement of taking long-term prisoners from Montserrat continued until 2005. Eventually, the Grand Turk prison administration refused to take any more foreign prisoners due to overcrowding.

Today, the majority of prisoners is either remanded or convicted in connection with the illegal drugs or money laundering trade. Due to long and harsh prison sentences, the relatively small prison has become overcrowded, housing adult male and female, as well as some young offenders, in very confined space.

Race relations among staff continue being a problem. The 2000 European Torture Commission's report urgently recommended that the TCI government pass specific legislation that would prohibit racial discrimination, which was openly practiced at HMP Grand Turk as well as by other official authorities on the TCI. Though the 2006 TCI Constitution provided for separate accommodation for juvenile prisoners under 16 under section 3 of the *Turks and Caicos Islands Constitution Order 2006* (S.I. 1913) the prison still accommodates unconvicted

juvenile prisoners from time to time. Child protection legislation is still in need of reform regarding corporal punishment in schools.

Following the European Torture Commission Report of 2000, UK government aid was released to construct a separate juvenile detention and rehabilitation centre, by converting the old police headquarters at Cockburn Town. By 2006 the facility was to become part of the Department of Social Development and this Safe Holding Facility was to provide sixteen units for convicted juvenile males under 18. Due to a large organized petition by Grand Turk residents, followed by a public demonstration, construction of the Juvenile Rehabilitation Center was halted by the TCI cabinet in 2007. This means that juveniles are still being held at HMP Grand Turk, thereby arguably violating the Constitution of 2006.

HMP Grand Turk came under further scrutiny and criticism by the law enforcement agency in 2006, following a number of security breaches and serious riots at the prison. All disturbances were related to illegal drugs and followed the arrest in July 2006 of a prison officer, who had worked at the prison for over two years and was found with 90 grams of cannabis hidden in his vehicle. After he pleaded guilty to the charge of possession with intent to supply he was fined \$3,500 and deported back to Jamaica.

In 2005 HMP Grand Turk introduced some correctional industries (prison workshops) outside its perimeters, including apprenticeships in carpentry and tailoring, funded by a public outreach program. Members of the community assist with the rehabilitation of some less dangerous prisoners, with limited educational and vocational training facilities also offered. A small prison shop outside the prison walls sells prisoner-made furniture. Of the 30 percent of prisoners on remand in 2007, only very few were permitted to participate in rehabilitative constructive regimes. Maximum security and mentally ill prisoners are excluded from programmed activities, though some long-term inmates were involved in the construction of a new building to accommodate improved facilities for learning and counseling programs inside HMP Grand Turk. By April 2007 the prison's superintendent had introduced sentence planning for long-term inmates, which reviewed prisoners' progress every six months.

Juvenile offending remains on the increase with little room for juveniles at the local prison. The Department for Social Development tries, wherever possible, to send young convicted offenders outside TCI for rehabilitation in the absence of a juvenile detention facility. In 2007 seven male juvenile offenders were accommodated at the Jamaican Juvenile Rehabilitation Center, part of the Jamaican Department of Corrections. Three juveniles were at a Seventh-Day Adventist facility in West Virginia and a further 18 young males were accommodated at HMP Grand Turk. A U.K. government report of 2006 noted

that sending juvenile convicts outside the TCI for punishment created an unnecessary expense; furthermore that the TCI government was losing sight of the care and rehabilitation of its young offenders.

FURTHER READING

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Table 1

Social and Economic Indicators

GDP per head	£7,811
Inflation	1.5%
Government Deficit	-£313,000
Government Debt	£20 million
Employment rate	92%
Life Expectancy (2001)	Male: 75 Female: 76.1 (2001)
Infant Mortality (2005)	3.1
Major Industries	Fishing; tourism; real estate; property development; international finance.
Major trading partners	U.S.A and Canada

Source: British Foreign and Commonwealth Office, 2008

Box 1

Chief Minister of the Turks and Caicos Islands on Drugs Charges in Miami, 1985

On 7 March 1985, TCI's Chief Minister Norman B. Saunders, 41, of the Progressive National Party (PNP), appeared in the federal criminal court of Miami together with other TCI officials, namely Commerce Minister Stafford Missick, 47, Junior Minister of Works, Aulden Smith, 33, and Canadian businessman, André Fournier, 46, of Sherbrooke, Quebec. All were charged with narcotics conspiracy charges. Norman Saunders' further charges included taking bribes to allow Colombian drug lords to use the TCI as a trans-shipment point for cocaine. All defendants pleaded not guilty.

On 23 March 1985, TCI's Governor General Christopher J. Turner, accounted the resignation of Norman Saunders as Chief Minister.

On 20 July 1985, the Miami jury found both Saunders and Missick guilty of drug conspiracy charges. Saunders was acquitted of the more serious charge of conspiring to import cocaine into the United States. Missick was convicted of cocaine importation. Saunders and Missick were sentenced to prison terms of four and ten years respectively, and each was fined US\$50,000.

Sources: New York Times, 7 March, 23 March, 26 March, 30 June, 20 July 1985; James Morton (2001) 'Lawyers for the Mob' In: Gangland Lawyers, page 257. London: Virgin.

Box 2

R. v. Hape [2007] SCC 26 of June 7, 2007 on appeal from the Ontario Court of Appeal, [2005] O.J. No. 3188.

In 1996, Canadian businessman Lawrence Richard Hape was suspected of money laundering activities on the Turks and Caicos Islands (TCI) by the Royal Canadian Mounted Police (RCMP). The RCMP sought permission from Detective Superintendent L. of the Turks and Caicos Police Force to conduct undercover investigations on the TCI, where the accused's investment company was located. The largest 'sting' operation took place in March 1998.

Hape was convicted in Canada of money laundering. He appealed to the Canadian Supreme Court on the grounds that at no point in the covert investigations had the TCI police produced any search warrants (though the Canadian police firmly believed that warrants were in place). Hape argued that this violated his human right to a fair trial under ss. 7, 8, 11(d), 24(2) and 32 of the *Canadian Charter of Rights*.

The Canadian Supreme Court dismissed Hape's appeal ruling that the *Charter* did not apply to searches and seizures *outside* Canada. Having conducted his business in the TCI, Mr. Hape should have been familiar with UK law and that the state where the crime occurs, claims jurisdiction over the criminal act (*Libman v. The Queen*, [1985] 2 S.C.R. 178).

Box 3

The Amanyara Robbery Trial at TCI Supreme Court, Providenciales (2007)

TC Islander Derek Parker, Jamaican Jermaine Reid, Bahamian Kingsley Arthur and Guyanese Roy Pestano, a security guard at the luxury TCI Amanyara resort in Providenciales, were found guilty of indecent assault, conspiracy to rob, two counts of aggravated burglary, two counts of robbery and wounding with intent relating. They had robbed the \$1000 a night suite of a New York couple on the night of 26 April. 2006. The robbers had escaped with \$12,000 in cash and valuables. All four were given life sentences and appealed against their conviction.

One of the robbery victims Janis Aurichio, a Manhattan real estate broker, sued the Singapore based Amanyara Resort Company with the Supreme Court of the State of New York for \$10 million for failing to provide adequate security and to disclose safety information in its literature.

Sources: 28 November 2008. Turks and Caicos Weekly News, 28 November 2008; UPI NEW YORK, 28 June 2006; ABC News 26 June 2006

Box 4

HMP Grand Turk Prison Drugs case: R. v. Pestano [2006]

Michael Pestano, a 22-year old Guyanese national and inmate at Grand Turk Prison was convicted of unlawful possession of Class 'B' drugs in the prison and sentenced to twelve months imprisonment on 30 October 2006 by Chief Magistrate, Hon. Richard Williams. Pestano's one year sentence was to run consecutively to the nine months he had been serving for theft. His brother, Roy Pestano, was at the time on remand at the prison charged with armed robbery at the Amanyara holiday resort in Providenciales (see Box 3).

Prison Officer, Earl Edwards, pleaded guilty in July 2006 to possession of drugs with intent to supply. He was fined \$3,500 and was deported to Jamaica. Her Majesty's Prison Grand Turk had been under close scrutiny following a number of perturbing incidents at the institution.

Passing sentence on Pestano, the Hon. Williams stated: "These offenses [possession of drugs in a penal institution] are all too prevalent and require the court to pass deterrent sentences." He added: "The trouble that drugs can cause in prison is obvious: injury to persons, particularly prison staff and damage to property can easily follow from the taking of drugs in prison."

Source: Turks and Caicos Free Press, 13 November 2006.

¹ House of Commons, Foreign Affairs Committee Report, 2007 at Q77

² Section 5 of the *Turks and Caicos Islands Constitution Order 2006* – SI No 1913

³ TCI's Registrar General's Office 2008. Contact: The Registrar's General Office, Front Street, Turks & Caicos Islands, British West Indies, Tel: (649) 946-2800

⁴ International Monetary Fund, 2005

⁵ Sadler, Herbert, E. *Turks Islands Landfall - A History of the Turks and Caicos Islands*. Kingston Jamaica: United Cooperative Printers, 1997.

⁶ Statutory Instrument, 2006, No. 1913

⁷ House of Commons, Foreign Affairs Committee Report, 2007 at QQ88 – 94

⁸ These crimes are prosecuted under the *Proceeds of Crime Act 1998* supplemented by the *Proceeds of Crime Money Laundering Regulations 1999*, and the *Proceeds of Crime Act 2002*. The *Extradition Act 1989* was enhanced and amended by the *Terrorism Act 2005* and the *Extradition (Overseas Territories) Order 2002*, making it easier to extradite suspects or wanted criminals from the TCI to the UK and other European Union member states. Section 442 of the *Proceeds of Crime Act 2002* brings the power to disclose information for overseas territorial purposes within the scope of the provisions of the *Anti-Terrorism, Crime and Security Act 2001* as well as the *Anti-Terrorism (Financial and Other Measures) (Overseas Territories) Order 2002*. Section 18 of the 2001 Act provides power for the Secretary of State to restrict disclosure of information for

overseas purposes. The power may be exercised where it appears to the Secretary of State that the overseas investigation or proceeding relates to a matter where it would be more appropriate for any investigation to be carried out by the authorities of the United Kingdom or a third country.

⁹ House of Commons, Foreign Affairs Committee Report, 2007 at QQ 95 – 100

¹⁰ House of Commons, Foreign Affairs Committee Report, 2007

¹¹ Sellin, Thorsten. *Slavery and the Penal System*. New York: Greenwood Press, 1976.

¹² Judge Stephen Tumim, Chief Inspector of Prisons. “Report on the Old Prison at Grand Turk,” in *Inspection of Prisons in the Caribbean Dependent Territories*. HM Inspectorate of Prisons, 1988: p.49.

¹³ Extract from a letter by Judge Stephen Tumim, Chief Inspector of Prisons, to the Attorney General of 26 November 1991.